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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/782,378	02/12/2001	Patrick Hearing	STONYB-04970	9755
23535	7590 06/13/2002			
MEDLEN & CARROLL, LLP			EXAMINER	
101 HOWARD STREET SUITE 350			LEFFERS JR, GERALD G	
SAN FRANCISCO, CA 94105				
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			1636	
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Carable Lefters	•		Application No.	Applicant(s)			
Carried Leffers   Gerald Leffers   Ger	Office Action Summary		09/782,378	HEARING ET AL.			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of orm myto be validate under the provisions of 3 CER 1.136(a). In ro event, however, may a raply be timely flied the proof of crepts specified above its less than thirty (30) says, a reply within the adabticy provided large and will express (30) says with be considered timely.  If the period for reply specified above its less than thirty (30) says, a reply within the adabticy provided large and will segret style. MONTH's from the malling date of this communication.  If the period for reply specified above its less than thirty (30) says, a reply within the adabtic reply is specified and the communication.  If the period for reply specified above its less than thirty (30) says, a reply within the adaptive replication of the communication to the communication. Sec. 1 (20) says with be considered timely.  If the period for reply specified and the section of the communication to the period of this communication.  Provided the section of the communication is considered to the communication to the communication.  This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal malters, prosecution as to the merits is closed in accordance with the practice under £x partie Queryle, 1335 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s)			Examiner	Art Unit			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ± MONTH(S) FROM THE MALINO DATE OF THIS COMMUNICATION.  Extensions of term may be analable under the provisions of 37 CPF 1.158(a). In no event, however, may a reply be timely filed If the period for may specified above, the machinum stabulatory period will expire SIX (6) MONTHS from the mailing date of this communication of the							
THE MAILING DATE OF THIS COMMUNICATION.  Extensions of the may be valide under the provisions of 37 CFR 1 135(a), in no event, however, may a reply be limely filed after SX (b) MONTHS from the mailing date of the communication.  It NO period for reply is specified between the communication of the provision of the communication of the communica							
2a)  This action is FINAL. 2b)  This action is non-final.  3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quay/le, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s)  is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5)  Claim(s)  is/are allowed.  6)  Claim(s)  is/are rejected.  7)  Claim(s)  is/are objected to.  8)  Claim(s)  is/are objected to restriction and/or election requirement.  Application Papers  9)  The specification is objected to by the Examiner.  10)  The drawing(s) filed on is/are: a)  accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11)  The proposed drawing correction filed on is: a)  approved by  disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12)  The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)  All b)  Some * c)  None of:  1.  Certified copies of the priority documents have been received.  2.  Certified copies of the priority documents have been received in Application No  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  *See the attached detailed Office action for a list of the certified copies on the certified copies of the priority under 35 U.S.C. § 119(e) (to a provisional application).  a)  The translation of the foreign language provisional application has been received.  15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).    Optimized Papers	THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
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1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6) Other:	, <del></del>						
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6) Other:	Attachment(s)						
	2) Notice	e of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Informal F				

Application/Control Number: 09/782,378

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## **DETAILED ACTION**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, 11, 12-19, drawn to methods of constructing a hybrid
   adenovirus/adeno-associated virus vector, classified in class 435, subclass 91.4.
- II. Claims 6-8, drawn to methods of administering a vector comprising a gene of interest to a cell in culture, classified in class 435, subclass 455.
- III. Claims 6-7 & 9-10, drawn to methods of administering a vector comprising a gene of interest to a cell comprised within a mammal, classified in class 514, subclass 44.

The inventions are distinct, each from the other because of the following reasons:

The inventions of Groups I-III are biologically and functionally distinct from one another, and thus one does not render the others obvious. For example, the methods of Groups II and III comprise additional methods steps that are not present in or required for the methods of the other Groups: administration of a purified viral vector to a host cell in culture (Group II) and administration of a purified viral vector to a host cell comprised within a mammal (Group III). Moreover, the end results of the methods from the different groups are different: generation of a vector (Group I), transfection of a cell in vitro with a vector comprising a gene of interest (Group II), and delivery of a gene of interest to a host cell in vivo (e.g. gene therapy) with a vector (Group III). Thus, the operation, function and effects of these different methods are different and distinct from each other. Therefore, the inventions of these different, distinct groups are capable of supporting separate patents.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Claim 6 link(s) inventions II and III. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claim 6. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald G Leffers Jr. whose telephone number is (703) 308-6232. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached on (703) 305-1998. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7939 for regular communications and (703) 305-7939 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Gerald G Leffers Jr.

Examiner Art Unit 1636

ggl June 5, 2002